

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

DAKOTA NELSON;  
BELINDA BIAFORE, individually and  
as Chairperson of the West Virginia  
Democratic Party; ELAINE A. HARRIS,  
individually and as Chairperson of the Kanawha County  
Democratic Executive Committee; WEST VIRGINIA  
DEMOCRATIC PARTY; and WEST VIRGINIA  
DEMOCRATIC HOUSE LEGISLATIVE  
COMMITTEE,

Plaintiffs,

Civil Action No. 3:19-cv-00898  
Honorable Robert C. Chambers

v.

MAC WARNER in his official capacity  
as WEST VIRGINIA SECRETARY OF  
STATE and VERA MCCORMICK, in her official  
capacity as CLERK OF KANAWHA COUNTY,  
WEST VIRGINIA,

Defendants.

**STIPULATIONS**

The parties in the above-captioned matter hereby stipulate as follows:

1. Dakota Nelson is a resident of Huntington, Cabell County, West Virginia. Nelson is registered to vote as a Democrat and is a member of the Democratic Party.
2. Nelson is a Democratic candidate for the West Virginia House of Delegates in District 16 from Cabell County, West Virginia having been nominated in the June 9, 2020 Primary Election.
3. Three delegates are elected from House of Delegates District 16.

4. Three Republicans and three Democrats are running for House of Delegates District 16 in the November 2020 general election.
5. Nelson was one of the Democratic nominees for the West Virginia House of Delegates in District 16 from Cabell County in 2016. He was listed last of the six candidates on the ballot and was not elected.
6. Belinda Biafore is a resident of Fairmont, Marion County, West Virginia. Biafore is registered to vote as a Democrat and has been a member of the Democratic Party in West Virginia for over forty-four years. Biafore has been an active supporter of the party for over fifty years. She serves as Chairperson of the West Virginia Democratic Party having previously served as party vice chairperson, member of the executive committee, and in several leadership roles for the West Virginia Federation of Democratic Women. Biafore regularly supports Democratic candidates in West Virginia elections and intends to vote for Democratic Party candidates in the upcoming November 2020 general election.
7. Elaine Harris is a resident of Kanawha County, West Virginia. Harris is registered to vote as a Democrat and has been a member of the Democratic Party in West Virginia for many years. Harris is and has been an active supporter of the party for decades. She currently serves as Chairperson of the Kanawha County Democratic Executive Committee. Harris regularly supports Democratic candidates in West Virginia elections and intends to vote for Democratic Party candidates in the upcoming November 2020 general election.
8. Nelson further alleges and would testify that the Ballot Order Statute harms his electoral prospects in the upcoming election.
9. The West Virginia Democratic Party is a state political party as defined by West Virginia Code §§ 3-1-8, 3-8-1a(30).

10. The West Virginia Democratic Party includes as members all persons registered as Democrats in the State of West Virginia, including all Democrats in the State of West Virginia running in the 2020 general election. Its mission is to elect Democratic candidates across West Virginia.
11. The West Virginia Democratic Party has nominated numerous candidates to run for elected offices who will appear on the ballot in the November 3, 2020 election.
12. The West Virginia Democratic House Legislative Committee is the West Virginia Democratic Party's caucus campaign committee for the West Virginia House of Delegates as defined by West Virginia Code § 3-8-1a(6).
13. The West Virginia Democratic House Legislative Committee is comprised of the 41 Democratic members of the House of Delegates. Many members of the West Virginia Democratic House Legislative Committee are candidates for office in the November 3, 2020 election. Its mission is electing its members and other Democratic candidates to the West Virginia House of Delegates from across West Virginia.
14. The Secretary is the State's chief elections official as designated by West Virginia Code § 3-1A-6(a).
15. The Secretary of State has the power under West Virginia law to, by order or rule, advise the clerks of county commissions and boards of ballot commissioners that enforcement of the Ballot Order Statute is enjoined, if this Court enjoins enforcement of the Ballot Order Statute after finding it unconstitutional.
16. Vera McCormick is the Clerk of Kanawha County, West Virginia, and serves as the Chair of the Kanawha County Ballot Commission. McCormick is also the class representative for all 165 West Virginia ballot commissioners.

17. Each county's Board of Ballot Commissioners prepares the ballots used in all elections in that county. *See* W. Va. Code § 3-1-21(a).
18. The Secretary is responsible for determining "the color of the paper of the ballot of each of the parties," W. Va. Code § 3-5-12, and providing "a list of all vendors authorized to print ballots for state, county and municipal elections to the clerk of each county commission." W. Va. Code § 3-1-21a(d).
19. After the ballots are printed, the individual county clerks must furnish "the package of ballots to the polling place where they" will be used. W. Va. Code § 3-4A-16.
20. In partisan elections, the Code requires ballot commissioners assign candidates' ballot position according to how their parties performed in the last presidential election:

The party whose candidate for president received the highest number of votes at the last preceding presidential election is to be placed in the left, or first column, row or page, as is appropriate to the voting system. The party which received the second highest vote is to be next and so on. Any groups or third parties which did not have a candidate for president on the ballot in the previous presidential election are to be placed in the sequence in which the final certificates of nomination by petition were filed.

W. Va. Code § 3-6-2(c)(3).

21. The ballot order for the November 2020 general election must be set on August 25, 2020.

W. Va. Code § 3-6-2(d)(2).

22. The Ballot Order Statute was enacted in 1991.

23. On December 17, 2019, Plaintiffs instituted this action for declaratory and injunctive relief against the Secretary alleging that the Ballot Order Statute is unconstitutional because it unfairly advantages the political party who received the most votes in West Virginia during the last presidential election. ECF No. 1.

24. Plaintiffs amended their complaint to add McCormick as a representative of all 165 ballot commissioners. ECF No. 7.
25. Count One of the Amended Complaint alleges the Ballot Order Statute unduly burdens Plaintiffs' First and Fourteenth Amendment right to vote and Count Two alleges the Ballot Order Statute violates the Fourteenth Amendment's Equal Protection Clause. ECF No. 7 at 13-16.
26. The Court later certified a defendant class of all 165 West Virginia county ballot commissioners and designated McCormick as the class representative.
27. Individual Plaintiffs are voters who support Democratic candidates. They allege that the Ballot Order Statute violates their First and Fourteenth Amendment rights to vote and associate.
28. Individual Plaintiffs have never been hindered from voting, have never been stopped from voting, and have never had trouble finding their preferred candidate.
29. No Democratic candidate has ever been removed from the ballot as a result of the Ballot Order Statute.
30. No ineligible candidate has been listed on the ballot because of the Ballot Order Statute.
31. Nothing in the Ballot Order Statute governs how votes are cast or who may appear on the ballot.
32. The Ballot Order Statute governs how candidates are arranged on the ballot.
33. The Parties are not aware of any errors in Dr. Krosnick's first dataset or Dr. MacDonald's first dataset.
34. Ballots in partisan elections in West Virginia contain the party affiliation of each candidate.

35. Kanawha County will draw the ballot order on August 25, 2020. Thereafter, the ballot will be sent to the printers and/or programmed for the electronic ballot machines. Absentee ballots will be mailed out beginning September 18, 2020. A change in the ballot order will not otherwise add any additional duties or responsibilities on the County Clerk once the ballot order is determined, the ballot proofs are approved by the ballot commissioners and the ballots are published in the newspaper.

DATED: July 24, 2020

Respectfully submitted,

**DAKOTA NELSON, BELINDA BIAFORE,  
ELAINE A. HARRIS, WEST VIRGINIA  
DEMOCRATIC PARTY, and WEST  
VIRGINIA DEMOCRATIC HOUSE  
LEGISLATIVE COMMITTEE,**

**By Counsel**

s/ Anthony J. Majestro

Anthony J. Majestro (WVSB 5165)  
POWELL & MAJESTRO PLLC  
405 Capitol Street, Suite P1200  
Charleston, WV 25301  
Phone: 304-346-2889  
Fax: 304-346-2895  
amajestro@powellmajestro.com

**MAC WARNER, SECRETARY OF STATE OF  
THE STATE OF WEST VIRGINIA**

**By Counsel,**

PATRICK MORRISEY  
ATTORNEY GENERAL

/s/ John M. Masslon II

Curtis R. A. Capehart (WV Bar # 9876)  
*Deputy Attorney General*  
John M. Masslon II (WV Bar #13650)  
Jessica A. Lee (WV Bar #13751)

*Assistant Solicitors General*  
1900 Kanawha Blvd. East  
Building 1, Room E-26  
Charleston, WV 25305  
Email: Curtis.R.A.Capehart@wvago.gov  
John.M.Masslon@wvago.gov  
Jessica.A.Lee@wvago.gov  
Telephone: (304) 558-2021

**VERA MCCORMICK, in her official  
capacity as CLERK OF KANAWHA COUNTY,  
WEST VIRGINIA**

**By Counsel,**

/s/ Michael W. Taylor  
Michael W. Taylor (WV Bar #11715)  
Samuel M. Bloom (WV Bar #13739)  
BAILEY & WYANT, PLLC  
500 Virginia Street, East, Suite 600  
Post Office Box 3710  
Charleston, West Virginia 25337-3710  
T: 304.345.4222  
F: 304.343.3133  
mtaylor@baileywyant.com  
sbloom@baileywyant.com